

13 / 15 / 17% FILM AND TELEVISION PRODUCTION REBATE REQUIREMENTS

Get a **13% rebate** of your total qualified production expenditures in the State of Tennessee.

Plus 2% more if at least 25% of the cast and/or crew are Tennessee residents. (“Day players” and extras are not included in determining the 25%)

And 2% more (maximum of \$100,000 rebate) if the Production Company spends at least \$20,000 for music created by Tennessee residents or for recording music in Tennessee.

The rebate is calculated on the total qualified Tennessee spend with “caps” on the above-the-line Tennessee spend.

REQUIREMENTS

- A Production Company headquartered outside the state must spend at least \$500,000 per production, and a Production Company headquartered within the state must spend at least \$200,000 per production, on qualified expenditures in Tennessee within 12 months after production commences. If for some reason the production can not be completed within 12 months, an extension may be granted in writing by the Executive Director of the Tennessee Film, Entertainment & Music Commission.
- The Production Company must provide the Tennessee Film, Entertainment and Music Commission (TFEMC) adequate assurances (financial and otherwise) of their ability to complete production.
- Production must begin within 90 days of TFEMC’s certification that the Production Company qualifies for an incentive.
- Script and resulting production must not be obscene in nature, and the Production Company must affirm that the production does not require that records be maintained pursuant to 18 U.S.C. Sec. 2257 with respect to any performer portrayed therein.
- All obligations incurred in state must be satisfied. Upon the completion of principal photography, the Production Company must post a notice, once a week for 3 consecutive weeks, in local newspapers in each Tennessee location where production took place, notifying the public of the need to file creditor claims with the Production Company by a specified date. The Production Company agrees that outstanding obligations are not waived by a creditor failing to file such claim by the specified date. The Production Company will not be entitled to receive any incentives, nor will they file any of their claims therefor with the state, until the Tennessee Department of Revenue notifies TFEMC that the Production Company has complied with all its obligations under this program.
- The Production Company shall maintain a detailed account (ledger), in print and electronic form, of all expenditures incurred in Tennessee. Full vendor names and addresses must be clearly indicated. The Production Company shall keep copies of receipts and other satisfactory documentation of all monies spent in Tennessee. The Production Company must provide TFEMC with a complete audited account ledger. All financials will be subject to audit by TFEMC, the Tennessee Department of Revenue, and the Department of Economic Community and Development.

- The Production Company shall have each Tennessee resident, engaged for the production, complete and execute a Declaration of Residency form. In determining whether 25% Tennessee cast and/or crew threshold achieved, extras and day players shall be excluded.
- The production must be completed, and TFEMC must be shown the completed production and given a copy (upon completion) prior to the Production Company being entitled to any incentives hereunder.
- The Production Company must provide appropriate production credits to the Governor and the State of Tennessee, TFEMC, and the regional film commission(s) (if applicable) providing services to the Production Company, as well as an acknowledgement that the production was filmed/videotaped in the State of Tennessee.
- The Production Company must provide TFEMC with complete crew and vendor lists for the production.
- The production must comply with all applicable State and Federal laws.
- The Production Company must agree to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Production Company, its employees, or any person acting for or on its or their behalf relating to the production.

DETERMINATION OF INCENTIVE AWARD:

- This is not a “first come, first serve” program nor one of unlimited resources. Currently the incentive fund available is approximately \$20,000,000. The TFEMC and the Tennessee Department of Economic and Community Development shall have the sole discretion of awarding these incentives, in furtherance of the best interests of the State of Tennessee.

ELIGIBLE EXPENDITURES FOR THE 13 / 15 / 17% FILM AND TELEVISION PRODUCTION REBATE

Expenditures are considered “qualified expenses” only to the extent that the costs are clearly and demonstrably incurred in Tennessee in the pre-production, production or postproduction phases of a qualified production.

Incurred in the state means payments made for goods or services used in the state in connection with a qualified production.

- All qualified spend on TN services, equipment and personnel
- Wages, salaries, fees, per diem and fringe benefits of TN cast and crew (All above the line personnel, with either single or multiple job functions, will have a salary and fee cap of \$100,000 for each function performed within a production).
- Tennessee residents **MUST** meet Tennessee resident criteria (such as having a Tennessee Driver's License).
- Housing, travel and per diem of out-of-state cast and crew
- Commercial airfare purchased through a TN based travel agency for travel to and from TN and within TN
- All TN spend associated with the production including art direction, wardrobe, make-up, hair, location fees, rental of facilities and equipment, scoring, special effects and all other customary post production costs.

NON-ELIGIBLE EXPENDITURES

- Wages, salaries, fees and fringe benefits of out-of-state cast and crew members
- Costs associated with advertising, marketing, distribution, financing, insurance, and completion bonds
- Internet purchases
- Cell phone reimbursements

The 13/15/17% Procedure

Tennessee Film, Entertainment & Music Commission

312 8th Avenue North, 9th Floor

Nashville, TN 37243

Phone: (615) 741-3456

Fax: (615) 741-5554

*You do not need to complete these steps until you are “greenlit” for Tennessee production.
Please read through all of the forms prior to beginning the application process.*

BEFORE PRODUCTION:

1. Register your Production Company for a Certificate of Conditional Eligibility with the Tennessee Film, Entertainment & Music Commission (TFEMC) using **Form A**. Forms can be found at www.film.tennessee.gov under “Incentives.” Mail or fax the form. **Please include all contact information!** You will be contacted once the TFEMC has received your form.

If approved, the state will issue a certificate of conditional eligibility to the authorized applicant. The receipt of the certificate of conditional eligibility does not guarantee availability of the expense rebate nor the amount of the rebate which is contingent on the final budget and the productions meeting the requirements of the incentive plan. In addition the actual receipt of the incentive rebate is subject to the availability of incentive funds for the program and a mutually executed Tennessee state contract.

2. Submit a copy of the script to the TFEMC. Preferred method for sending script is Final Draft in PDF via email to tn.film@state.tn.us or by mailing a hard copy. If you are requesting any assistance from our Location department, please also include a location breakdown.
3. Production Company must provide adequate assurances (financial and otherwise) of their ability to complete production.
4. Once the production is approved for a Certificate of Conditional Eligibility, a meeting will be scheduled with the TFEMC. This meeting should include your *Head Accountant, Line Producer and/or UPM and/or Production Supervisor*.

DURING PRODUCTION:

Each Tennessee resident employed on your production must complete **Form B**, a Declaration of Residency form **and** provide proof of residency, which should be a copy of a valid Tennessee driver's license.

5. Keep a detailed account (ledger), in print and on CD, of all expenditures incurred in Tennessee during pre-production, production and post (if applicable).
 - o Full vendor names must be clearly visible on ledger
 - o Any credit card purchases must include detail of purchases/vendor names
 - o Make copies of each employee's *Declaration of Residency* form and attach proof of residency and sort alphabetically by last name
 - o Make copies of petty cash envelope summaries (copy the front of each petty cash envelope) and sort by PC envelope number
 - o Make copies of receipts (keep originals for your records) in case they are requested from the Tennessee Department of Revenue. If possible, scan your invoices/receipts into PDF files and submit on CD

AFTER PRODUCTION:

6. Once production is completed, use your records to compile a comprehensive ledger of Tennessee expenditures and calculate your potential rebate. Do not complete your ledger until your very last Tennessee expenditure, which would include any post-production.

7. Please provide proof of the following: *"Upon the completion of principal photography, Production Company must post a notice, once a week for 3 consecutive weeks, in local newspapers in each Tennessee location where production took place, notifying the public of the need to file creditor claims with the production company by a specified date. Production company agrees that outstanding obligations are not waived by a creditor failing to file such claim by the specified date. Production company will not be entitled to receive any incentives, nor will they file any of their claims therefor with the state, until the Tennessee Department of Revenue notifies TFEMC that the production company has complied with all its obligations under this program."*

Please include production title, address, phone, fax, and contact name(s) for your primary or corporate office - not your Tennessee production office - as vendors need to be able to contact you after you have closed your local production office. Please submit this information to the TFEMC *and* fax a copy of the newspaper bill for all three weeks to the TFEMC. This information will also be posted on the web site of the TFEMC for sixty (60) days.

8. The TFEMC will need copies of the following information:

- ☐ Final Budget
- ☐ General ledger
- ☐ **Total** dollar amount spent in Tennessee (including labor)
- ☐ Total Tennessee payroll figure
- ☐ Total Payroll report (excluding/obscuring social security numbers)
- ☐ Independent Auditor's Report
- ☐ Certificate of Legal Existence from the Tennessee Secretary of State
- ☐ Certificate of Insurance
- ☐ Total number of Tennessee crew members hired (please include prep crew, construction, caterers, teamsters, production office, etc... Do not include day players or extras.)
- ☐ Crew call sheets
- ☐ Average Tennessee crew size (per day) for prep
- ☐ Average Tennessee crew size (per day) for shoot
- ☐ Declaration of Residency Forms - attach proof of residency and alphabetize by last name
- ☐ Prep dates & Number of prep days
- ☐ Shoot dates & Number of shoot days
- ☐ Distribution Plan
- ☐ List of all Tennessee locations used
- ☐ Final Crew list
- ☐ Final Vendor list
- ☐ Vendor invoices and proof of payment
- ☐ Petty cash envelope summaries sorted by PC envelope number
- ☐ At least one copy of the production (due upon completion)

9. Complete **Form C**, the incentive application. Mail your completed package. Make sure to submit the **application** and **all supporting documents**.

NOTE: FEWER MISTAKES EQUAL A FASTER REBATE!

Upon review by the TFEMC, this package may be forwarded to the TN DEPT. OF REVENUE. They will review your claim *line by line* and return the form to you with the approved amount. Sorry, the TFEMC nor TN DEPT. OF REVENUE cannot estimate the length of time the audit process will take.

10. Once your incentive application is received, the production contact will be notified by the TFEMC. In order to receive the rebate at the end of production, all productions will need to enter a contract with the State of Tennessee.

For questions regarding the tax incentive program, you may contact the TFEMC: (615) 741-3456 or tn.film@state.tn.us



Revised
Effective June 29, 2007

Office of the Governor
Perry A. Gibson, Executive Director

tn.film@state.tn.us

312 8th Avenue North, 9th Fl.
Nashville, TN 37243
(615) 741-3456
(615) 741-5554 - fax

Form A
Registration for Certification of Conditional Eligibility

1. Production Information:

- a) Name of Production Company _____
- b) Director _____
- c) Producer(s) _____
- d) Executive Producer(s) _____
- e) Type of Production (e.g. feature, short film, documentary, TV pilot, series, etc.)

- f) Production Title _____

2. Production Company Headquarters Information:

- a) Name _____
- b) Address _____

- c) Phone _____
- d) Fax _____
- e) Website Address _____
- f) Contact Name/Title _____
- g) Contact Phone, Cell & Email _____
- h) Type of entity (e.g. "C" or "S" Corporation, LLC, Partnership, Trust, etc.)

- i) State in which Incorporated or Registered _____
- j) Federal Tax I.D. Number (FEIN) _____

3. Production Company Tennessee Information:

- a) Name (if different) _____
- b) Address _____

- c) Phone _____
- d) Fax _____
- e) Local Contact Name/Title _____

- f) Local Contact Phone, Cell & Email _____

- g) Type of Entity _____
- h) State in which Incorporated or Registered _____
- i) Federal Tax ID Number (FEIN) _____

4. Type of 13/15/17% Incentive production intends to apply for:

- ☐ Production company is headquartered outside of Tennessee, and qualified production costs expended in Tennessee in a 12 month period will equal or exceed \$500,000, 13% of such costs.
- ☐ Production company is headquartered in Tennessee, and qualified production costs expended in Tennessee in a 12 month period will equal or exceed \$200,000, 13% of such costs.
- ☐ Additional 2% for at least ¼ of cast and/or crew being Tennessee residents.
- ☐ Additional 2% of total qualified production costs expended in Tennessee if production company spends at least \$20,000 for music created by Tennessee residents or for recording music in Tennessee. Refund has a “cap” of \$100,000.

5. Headquarters Incentive production intends to apply for:

- ☐ Production company is headquartered in Tennessee and will incur at least \$1,000,000 in qualified expenses producing a theatrical film in Tennessee. Applicant will register with the Department of Revenue and will apply for both incentives.
- ☐ Qualified investor is headquartered in Tennessee and invested in a production company that shall incur at least \$1,000,000 in qualified expenses producing a theatrical film in Tennessee. Applicant will register with the Department of Revenue and will apply for both incentives.

6. Production Costs and Tennessee Production Information:

- a) Preliminary budget \$ _____
- b) Estimated TN expenditures: \$ _____
- c) It is anticipated that Tennessee residents will comprise _____% of total cast and _____% of total crew (_____% of combined cast/crew). (25% cast and/or crew is defined as crew that makes the final crew list and does not include dayplayers.)

d) It is anticipated that Tennessee production dates/days will be:

Period	Dates	No. of Days
Pre-production		
Production		
Post Production		

6. To extent known, please provide detailed current plans for distribution, including name(s) of distributor(s):
- _____
- _____
- _____
- _____
- _____
7. Prior to production, submit a copy of your insurance policy for production, including agent, insurance company(s) and policy amounts.
8. Please provide detailed information as to what assurances State of Tennessee will have that financing to complete production will be available (e.g. completion bond, financial guarantees, etc.).
9. Attach the following:
- a) Detailed preliminary budget.
 - b) Script and synopsis.
 - c) List of all creative elements currently known (e.g. director, cast, etc.).
10. Send completed application to:

Tennessee Film, Entertainment & Music Commission
312 8th Avenue North, 9th Floor
Nashville, TN 37211

I hereby certify that the information provided in this application is true and correct, and I am aware that any applicant that obtains incentives from the State of Tennessee by filing a knowingly false or fraudulent claim shall be liable to the State of Tennessee for reimbursement of all monies received. Reimbursement of such monies shall be in addition to payment of a fine and/or other penalties imposed pursuant to Title 39 of the Tennessee Code. I understand that submission of an application does not in any way guarantee receipt a rebate or that rebate funds will be available.

Signature

Print Name

Title

Date



Form B
Tennessee Declaration of Residency

The purpose of this form is to certify that Tennessee residents were hired as part of your cast/and or crew. Film production companies that choose to claim an additional 2% Film and Television Production Rebate for employing at least 25% Tennessee cast and/or crew for the production must have each employee fill out this Tennessee Declaration of Residency Form.

Name: _____ SS #: _____

Permanent Residence: _____

City, State and Zip Code: _____

Title of Film or Television Project: _____

Are you presently a resident of Tennessee? _____

Do you anticipate changing your residency status during the time that you are expected to work on the film or television project? _____

Tennessee residents employed with this project must provide proof of residency to the production company in the form of a copy of a current Tennessee driver's license in order to show you reside in Tennessee. A minor would need to also present their parent's proof of residency with their own.

I declare under penalty of perjury that I have examined this document and to the best of my knowledge and belief it is true, correct and complete.

Signature

Date



Office of the Governor
Perry A. Gibson, Executive Director

tn.film@state.tn.us

312 8th Avenue North, 9th fl.
Nashville, TN 37243
(615) 741-3456
(615) 741-5554 -fax

Form C
Incentive Application

1. Production Information:

- a) Production Title _____
- b) Primary Contact _____
- c) Contact Title _____
- d) Address _____

- e) Phone _____
- f) Fax _____
- g) Website Address _____
- h) Contact Email _____
- i) Type of entity (e.g. "C" or "S" Corporation, LLC, Partnership, Trust, etc.)
(please attach a copy of last annual report filed) _____
- j) State in which Incorporated or Registered _____
- k) Federal Tax I.D. Number (FEIN) _____
- l) Total Budget \$ _____
- m) Actual Tennessee Spend \$ _____
 - Pre-production \$ _____
 - Production \$ _____
 - Post-production \$ _____
- n) Production Dates:

<u>Period</u>	<u>Start Date</u>	<u>End Date</u>	<u>TN Start Date</u> (if different)	<u>TN End Date</u> (if different)
Pre-production				
Principal Production				
Post Production				

- o) Date Last Qualified Expenditure Incurred in Tennessee ____/____/____
- p) Total Cast _____ TN Cast _____
- q) Total Crew _____ TN Crew _____

2. Tennessee Locations used (attach additional sheet if necessary):

<u>Location</u>	<u>City</u>	<u>Street Address</u>	<u>Start Date</u>	<u>End Date</u>

3. Type of 13/15/17% Incentive Being Applied For (check all that apply):

- ☐ Production company is headquartered outside of Tennessee, and qualified production costs expended in Tennessee in a 12 month period equal or exceed \$500,000, 13% of such costs.
- ☐ Production company is headquartered in Tennessee, and qualified production costs expended in Tennessee in a 12 month period equal or exceed \$200,000, 13% of such costs.
- ☐ Additional 2% for at least ¼ of cast and/or crew being Tennessee residents.
- ☐ Additional 2% of total qualified production costs expended in Tennessee if production company spends at least \$20,000 during post-production (i) in acquisition costs for music created by Tennessee residents and/or (ii) for recording of music in Tennessee. Refund has a “cap” of \$100,000

4. Headquarters Incentive:

- ☐ Production company is headquartered in Tennessee and incurred at least \$1,000,000 in qualified expenses producing a theatrical film in Tennessee. Applicant has registered with the Department of Revenue and is applying for both incentives.
- ☐ Qualified investor is headquartered in Tennessee and invested in a production company that incurred at least \$1,000,000 in qualified expenses producing a theatrical film in Tennessee. Applicant has registered with the Department of Revenue and is applying for both incentives.

5. To extent known, please provide detailed current plans for distribution, including name(s) of distributor(s):

6. Anticipated Release / Premiere Date _____/_____/_____
7. The Production will premiere in Tennessee. Yes _____ No _____
8. The Production Company has satisfied all financial obligations. Yes _____ No _____
9. Applicant has posted notice, at least once a week for 3 consecutive weeks, in a local newspaper for each Tennessee location where production took place, notifying public of the need to file creditor claims with the Production Company by a specified date. Yes _____ No _____

10. Send completed application to:

Tennessee Film, Entertainment & Music Commission
312 8th Avenue North, 9th Floor
Nashville, TN 37211

Along with copies of the following information:

- ☐ Final Budget
- ☐ General ledger
- ☐ **Total** dollar amount spent in Tennessee (including labor)
- ☐ Total Tennessee payroll figure
- ☐ Total Payroll report (excluding/obscuring social security numbers)
- ☐ Independent Auditor's Report
- ☐ Certificate of Legal Existence from the Tennessee Secretary of State
- ☐ Certificate of Insurance
- ☐ Total number of Tennessee crew members hired (please include prep crew, construction, caterers, teamsters, production office, etc... Do not include day players or extras.)
- ☐ Crew call sheets
- ☐ Average Tennessee crew size (per day) for prep
- ☐ Average Tennessee crew size (per day) for shoot
- ☐ Declaration of Residency Forms - attach proof of residency and alphabetize by last name
- ☐ Prep dates & Number of prep days
- ☐ Shoot dates & Number of shoot days
- ☐ Distribution Plan
- ☐ List of all Tennessee locations used
- ☐ Final Crew list
- ☐ Final Vendor list
- ☐ Vendor invoices and proof of payment
- ☐ Petty cash envelope summaries sorted by PC envelope number
- ☐ At least one copy of the production (due upon completion)

Under penalty of perjury, I hereby certify that the information provided in this application is true and correct, and I am aware that any applicant that obtains incentives from the State of Tennessee by filing a knowingly false or fraudulent claim shall be liable to the State of Tennessee for reimbursement of all monies received. Reimbursement of such monies shall be in addition to payment of a fine and/or other penalties imposed pursuant to Title 39 of the Tennessee Code. I understand that submission of an application does not in any way guarantee receipt a rebate or that rebate funds will be available.

Signature

Print Name

Title

Date

15% REFUND – HEADQUARTERS LOCATION

A 15% refund calculated upon Qualified Expenses that are necessary for the production of a theatrical film or television show in Tennessee. In order to qualify for the 15% refund the production company must be headquartered in Tennessee and it or its subsidiary must incur at least \$1,000,000 in qualified expenses in the state. **This refund is administered through the Department of Revenue.**

QUALIFICATIONS FOR HEADQUARTERS 15% REFUND.

- Production Company must establish a permanent headquarters facility in Tennessee.
- If the qualified production company does not have a headquarters facility, then any qualified investor that has a Tennessee headquarters may qualify for the refund. The qualified investor shall be allowed a refund equal to the amount of refund that the production company would have been entitled to had it established a headquarters facility, multiplied by the qualified investor's percentage ownership interest in the qualified production company.
- Production Company must incur at least \$1,000,000 in qualified expenses. "Qualified expenses" means those expenses incurred in Tennessee that both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, are necessary for the production of a theatrical film or television show in Tennessee that is in the best interests of this state. For purposes of this subsection, "best interests of this state" includes, but is not limited to, a determination that production of the film does not require that records be maintained pursuant to 18 U.S.C. Section 2257 with respect to any performer portrayed in the film.
- In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation to the state verifying the qualified expenses. The Commissioner of Revenue shall review documentation submitted and notify the qualified production company of the amount approved, if any.
- The production company or the qualified investor may then submit a claim for refund.

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 07-08**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Statutory requirements to qualify for incentives available for the production of a movie in Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] is a yet-to-be formed Tennessee limited liability company. It will be owned by two individuals, [INDIVIDUAL NAMES] (the “Producers”), both of whom currently reside in [CITY OUTSIDE TENNESSEE] where they produce a wide variety of movies, both in and out of the [STATE WHERE THE PRODUCERS RESIDE]. The Producers will form [THE TAXPAYER] in Tennessee and move their production work to Tennessee.

Each of the producers is currently in the process of purchasing a home in Tennessee and they plan to move to Tennessee during the coming months. Upon their relocation in Tennessee and the formation of [THE TAXPAYER], the Producers will permanently reside in Tennessee and will be domiciled in Tennessee. Although the Producers will continue to have some production work outside Tennessee, the majority of their production work will be in the State of Tennessee.

[THE TAXPAYER’S] headquarters and principal office will be in the State of Tennessee and will probably be located in the [TENNESSEE CITIES] area. The Producers and any other headquarters staff will be employed and located in this office and [THE TAXPAYER’S] primary headquarters related functions and services will be performed there. [THE TAXPAYER] will not produce any movies that 18 U.S.C. § 2257 requires records to be maintained with respect to any performer portrayed in the movie.¹

QUESTIONS PRESENTED

1. Will the formation of [THE TAXPAYER] as a Tennessee limited liability company, the establishment of its principal office and headquarters in the State of Tennessee and the Producer’s relocation to the State of Tennessee qualify as establishing a “headquarters facility,” Pursuant to Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2)?
2. Will the costs and expenses incurred by [THE TAXPAYER] in Tennessee to produce movies in the State of Tennessee be deemed to be “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A)?
3. If [THE TAXPAYER] incurs at least \$1,000,000 in “qualified expenses”, will it be deemed a “qualified production company,” as the term is defined in Tenn. Code Ann. § 67-4-2109(k)(1)(C)?
4. Assuming that each of the above questions are answered in the affirmative, will

¹ The facts stated in this paragraph were confirmed by [THE TAXPAYER’S ATTORNEY] in a March 15, 2007 telephone conversation with a representative of the Tennessee Department of Revenue. Title 18 U.S.C. § 2257 pertains to record keeping requirements for the producer of a film that contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct.

[THE TAXPAYER] be entitled to the refund for qualified expenses as set forth in Tenn. Code Ann. § 67-4-2109(k)(2)?

5. Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that to be deemed a “qualified production company,” an entity must incur at least \$1,000,000 in “qualified expenses.” Is this a one-time threshold requirement?
6. Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are those expenses incurred in Tennessee that “are necessary for the production of a movie in Tennessee that is in the best interests of the state.”
 - (a) What does the language “necessary for the production of a movie in Tennessee” mean?
 - (b) What does the language “in the best interests of this state” mean?
7. What documentation is required to evidence “qualified expenses”?

RULINGS

1. Yes.
2. Yes, provided that the costs and expenses are determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development to be necessary for the production of a movie in Tennessee that is in the best interests of the State of Tennessee.
3. Yes.
4. Yes, provided that all applicable statutory requirements of Tenn. Code Ann. § 67-4-2109(k) are met.
5. No. The qualified production company must incur at least \$1,000,000 in qualified expenses for the production of each movie produced in Tennessee that is eligible for the incentive refund.
6. (a) Expenses “necessary for the production of a movie in Tennessee” are expenses incurred in Tennessee without which the movie could not have reasonably been made. The phrase “necessary for the production of a movie in Tennessee” does not mean only the expenses that would be necessary to make the movie in Tennessee on the lowest possible budget.
 - (b) A movie that contains one or more visual depictions of actual sexually explicit conduct, or a movie that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, would bring disgrace, infamy, reproach or stigma to the State of Tennessee in the eyes of the general

public because of its subject matter or visual depictions, would not be “in the best interests of this state” and its producer will not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie in Tennessee.

7. Any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses claimed are eligible for the statutory incentive will be required. Actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. In any case, the Commissioner will not require any more documentation regarding “qualified expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

ANALYSIS

APPLICABLE STATUTES

The following definitions are set forth in Tenn. Code Ann. § 67-4-2109(k)(1) with regard to the availability of a refund for a percentage of the expenses incurred in producing a movie in Tennessee:

- (A) “Qualified expenses” means those expenses incurred in Tennessee that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary for the production of a movie in Tennessee that is in the best interests of this state. For purposes of this subdivision (k)(1)(A), “best interests of this state” includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie.
- (B) “Qualified investor” means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company; and
- (C) “Qualified production company” means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses.

Tenn. Code Ann. § 67-6-224(b)(3), referenced in Tenn. Code Ann. § 67-4-2109(k)(1)((B) above, defines a “headquarters facility” as follows:

- (3) “Headquarters facility” means a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters

related functions and services are performed.

Tenn. Code Ann. § 67-4-2109(k) makes the following provisions for a qualified production company or a qualified investor that has established a headquarters facility in Tennessee to obtain a refund of a percentage of the expenses incurred in producing a movie in Tennessee:

- (2) A refund in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed to any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a refund equal to the amount of refund that the qualified production company would have been entitled to had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.
- (3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.
- (4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.
- (5) Once the qualified production company has been notified of the approved amount, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for refund. The refund shall be subject to the procedures of § 67-1-1802; provided, however; notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

APPLICATION OF THE STATUTES TO A QUALIFIED PRODUCTION COMPANY

The statutes set forth above provide that a "qualified production company" that produces a movie in Tennessee may qualify for a refund of 15% of the "qualified expenses" of producing the movie if the following requirements are met:

1. A "qualified production company" must be established in Tennessee that:
 - (a) Is a "headquarters facility" that houses the entity's international, national, or regional headquarters; and

- (b) Is the employment location and physical location of the entity's headquarters staff employees; and
 - (c) Is where the entity's primary headquarters related functions and services are performed.
- 2. The entity so established must:
 - (a) Incur at least \$1 million in Tennessee "qualified expenses" in the production of a movie in Tennessee; and
 - (b) Secure a written determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:
 - (i) The movie is in the best interest of Tennessee; and
 - (ii) The expenses incurred in producing the movie were necessary for the production of the movie in Tennessee; and
 - (iii) The movie does not contain 1 or more visual depictions, made after November 1, 1990, of actual sexually explicit conduct. (See 18 U.S.C. § 2257)
- 3. The "qualified production company" must submit documentation of the expenses incurred in producing the movie to the Commissioner of Revenue.
- 4. Upon review of the documentation submitted for the expenses incurred in producing the movie, the Commissioner of Revenue must notify the "qualified production company" of the approved amount.
- 5. Within 3 years from December 31 of the year in which the expenses are incurred, the "qualified production company" must file a refund claim with the Department of Revenue for the expenses approved.
- 6. The refund claim must be processed under the provisions of Tennessee law which requires approval of the Commissioner of Revenue and the Tennessee Attorney General.
- 7. A qualified production company meeting the above outlined requirements will be refunded 15% of the "qualified expenses" that it incurs in the production of a movie in Tennessee.

We turn now to an analysis of the rulings made with regard to the questions presented.

1. [THE TAXPAYER] WILL BE CONSIDERED A “HEADQUARTERS FACILITY” UNDER THE PROVISIONS OF TENN. CODE ANN. § 67-6-224(b)(3) AND FOR PURPOSES OF TENN. CODE ANN § 67-4-2109(k)(2)

[THE TAXPAYER] will be considered a “headquarters facility” under the provisions of Tenn. Code Ann. §§ 67-6-224(b)(3) and for purposes of 67-4-2109(k)(2), if it:

1. Establishes a facility in Tennessee that houses its international, national, or regional headquarters; and
2. Its headquarters staff employees are located and employed at its Tennessee “headquarters facility”; and
3. Its primary headquarters related functions and services are performed at the facility.

The headquarters and principal office of [THE TAXPAYER] will be located in the State of Tennessee, probably in the [TENNESSEE CITIES] area. This is where the Producers and any other headquarters staff will be employed and located and [THE TAXPAYER’S] primary headquarters related functions and services will be performed there.

The facts presented clearly show that [THE TAXPAYER] will establish its headquarters at a facility in Tennessee where its headquarters staff employees will be located and employed and where its primary headquarters related functions and services will be performed. [THE TAXPAYER] will thus be considered a “headquarters facility” under the provisions of Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2).

2. COSTS AND EXPENSES INCURRED BY [THE TAXPAYER] IN TENNESSEE TO PRODUCE A MOVIE IN THE STATE OF TENNESSEE WILL BE CONSIDERED “QUALIFIED EXPENSES” PROVIDED PROPER APPROVAL IS SECURED

Tenn. Code Ann. § 67-4-2109(k)(1)(A) defines “qualified expenses” for purposes of the incentives available for production of a movie in Tennessee. The statute sets forth the following criteria:

1. The expenses must be incurred in Tennessee to produce a movie in the State of Tennessee.
2. The Commissioner of Revenue and the Commissioner of Economic and Community Development must make a written determination stating that:
 - (a) The movie is in the best interest of Tennessee; and

(b) The expenses incurred were necessary for the production of the movie in Tennessee; and

3. The movie must not contain 1 or more visual depictions, made after November 1, 1990, of actual sexually explicit conduct. (See 18 U.S.C. § 2257)

Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires the “qualified expenses” to be incurred by a “qualified production company” and requires that the expenses so incurred amount to at least \$1,000,000.

As explained in #3 below, [THE TAXPAYER] will be considered a “qualified production company” if it incurs “qualified expenses” of at least \$1,000,000 in Tennessee in the production of a movie in the State of Tennessee.

The facts presented state that [THE TAXPAYER] will not produce any movies that contain any visual depictions of actual sexually explicit conduct (See 18 U.S.C. § 2257). Upon securing a written determination from the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that the costs and expenses incurred by [THE TAXPAYER] were necessary for the production of a movie in Tennessee that is in the best interests of the State of Tennessee, such costs and expenses will be deemed to be “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A).

3. [THE TAXPAYER] WILL BE CONSIDERED A “QUALIFIED PRODUCTION COMPANY” IF IT INCURS “QUALIFIED EXPENSES” IN TENNESSEE OF AT LEAST \$1,000,000 IN THE PRODUCTION OF A MOVIE IN THE STATE OF TENNESSEE

In order to be considered a “qualified production company,” Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires that the entity incur “qualified expenses” in Tennessee of at least \$1,000,000 to produce a movie in Tennessee.

If [THE TAXPAYER] incurs “qualified expenses” in Tennessee of at least \$1,000,000 in the production of a movie in the State of Tennessee, it will be considered a “qualified production company” for purposes of being eligible for incentives available under Tenn. Code Ann. § 67-4-2109(k) for production of a movie in Tennessee.

4. [THE TAXPAYER] WILL BE ENTITLED TO A REFUND OF 15% OF ITS “QUALIFIED EXPENSES” PROVIDED THAT IT MEETS ALL APPLICABLE STATUTORY REQUIREMENTS SET FORTH IN TENN. CODE ANN. § 67-4-2109(k)

In view of the facts presented and the rulings in response to questions 1 through 3 above, there is no reason to believe that [THE TAXPAYER] will not meet all of the applicable statutory requirements set forth in Tenn. Code Ann. § 67-4-2109(k) and

outlined in this Letter Ruling to qualify for a 15% refund of the qualified expenses that it incurs in the production of a movie in Tennessee.

5. THE “QUALIFIED EXPENSES” THRESHOLD OF \$1,000,000
APPLIES TO EACH MOVIE PRODUCED
BY A “QUALIFIED PRODUCTION COMPANY” IN TENNESSEE

Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that a “qualified production company” is an “. . . entity that incurs at least \$1,000,000 in “qualified expenses.”

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are “. . . those expenses incurred in Tennessee that . . . are necessary for the production of a movie in Tennessee . . .” (Emphasis underline added.)

According to these statutes, one of the requirements that a “qualified production company” must meet to be eligible for the movie production incentive refund provided by Tenn. Code Ann. § 67-4-2109(k)(2) is that the expenses that it incurs for the production of “a movie” in Tennessee must amount to at least \$1,000,000.

For example, suppose that expenses for the first movie that [THE TAXPAYER] produces in Tennessee amount to \$1,000,000. Assuming that all applicable statutory requirements are met, [THE TAXPAYER] will receive a refund of \$150,000 (15% of \$1,000,000).

For its second movie produced in Tennessee, suppose that [THE TAXPAYER] incurs expenses of \$990,000. [THE TAXPAYER] will not receive any refund because the \$1,000,000 “qualified expenses” threshold has not been met.

Assume expenses for the third movie produced by [THE TAXPAYER] in Tennessee amount to \$1,050,000 and all applicable statutory requirements are met. [THE TAXPAYER] will receive a refund of \$157,500 (15% of \$1,050,000).

6. (a) REQUIREMENT THAT “QUALIFIED EXPENSES”
“ARE NECESSARY FOR THE PRODUCTION OF A MOVIE IN TENNESSEE”

Neither the term “necessary” nor any of the other terms in the phrase “. . . are necessary for the production of a movie in Tennessee . . .” found in Tenn. Code Ann. § 67-4-2109(k)(1)(A) are defined in the law.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. [*National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 \(Tenn.1991\)](#). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a

dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

One of the definitions given for the word “necessary” in BLACK’S LAW DICTIONARY 928 (5th ed. 1979) is “. . . something which in the accomplishment of a given object cannot be dispensed with . . .” Among the definitions given for the word “necessary” in THE AMERICAN HERITAGE DICTIONARY 834 (2nd ed. 1982) are “[a]bsolutely essential; indispensable” and “[n]eeded to achieve a certain result . . .”

In view of the context of the phrase “. . . are necessary for the production of a movie in Tennessee . . .” and the definitions of the word “necessary” cited in the above paragraph, it appears that the legislative intent or propose is to classify expenses without which the movie could not have reasonably been made as a “qualified expenses.”

It does not appear that the legislature intended that only expenses that would be necessary to make the movie in Tennessee on the lowest possible budget will be allowed as “qualified expenses.”

It appears that the legislature only intended to give the Commissioner of Revenue and the Commissioner of Economic and Community Development the ability to review expenses that a “qualified production company” claims as “qualified expenses” to make sure that such expenses are reasonably related to the production of a movie in Tennessee.

For example, if a “qualified production company” had someone on its payroll that had nothing to do with making the movie in Tennessee, or who was merely present as a bystander when the movie was made, but did not actually do anything at any time in connection with the movie, then that person’s salary would not be allowed as a “qualified expense.” If a person in the employ of the “qualified production company” worked on many projects, including the making of a movie in Tennessee, then only the portion of such person’s salary paid while the person was actually working on making the particular movie in Tennessee would be allowed as a “qualified expense.” Expenses incurred outside Tennessee will not be allowed as “qualified expenses.”

6(b) MEANING OF THE LANGUAGE “IN THE BEST INTERESTS OF THIS STATE”
IN TENN. CODE ANN. § 67-4-2109(k)(1)(A)

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are limited to those expenses incurred in Tennessee that, in the sole discretion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, are necessary for the production of a movie in Tennessee and “in the best interests of this state.”

By enactment of Tenn. Code Ann. § 67-4-2109(k), the Tennessee legislature obviously wants to encourage the making of movies in Tennessee. The legislature has provided an incentive to entities that choose to make movies in Tennessee and that meet the statutory requirements to qualify for the incentive offered. However, the legislature does

not want to encourage or reward the making of movies in Tennessee that are not “in the best interests of this state.”

The last sentence of Tenn. Code Ann. § 67-4-2109(k)(1)(A), set forth below, gives an example of a movie that would not be “in the best interests of this state:”

For purposes of this subdivision (k)(1)(A), “best interests of this state” includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie.

Title 18 U.S.C. § 2257 is a federal law that pertains to record keeping requirements for the producer of a film that contains one or more visual depictions of actual sexually explicit conduct. The Tennessee legislature does not believe that the making of a movie in Tennessee that contains one or more visual depictions of actual sexually explicit conduct would be “in the best interests of this state” and does not want to reward entities who choose to make such movies in Tennessee.

A movie that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, would bring disgrace, infamy, reproach or stigma to the State of Tennessee in the eyes of the general public because of its subject matter or visual depictions would not be “in the best interests of this state” and its producer would not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie in Tennessee.

7. DOCUMENTATION REQUIRED TO EVIDENCE “QUALIFIED EXPENSES”

Tenn. Code Ann. § 67-4-2109(k)(3) and (4) make the following provisions concerning the documentation of “qualified expenses” that are eligible for the statutory incentive for the making of a movie in Tennessee:

(3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.

The statutes are so written that the Commissioner of Revenue may require any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses are eligible for the statutory incentive. The actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. If the nature of

the expense and its relationship to the movie produced is not obvious from such a listing, then a further explanation may need to be provided.

In some situations, the Commissioner may find it necessary to require a copy of the invoice evidencing each expense and/or a copy of the canceled check or other evidence of payment. Affidavits attesting to certain expenses, or certain work done in production of the movie in Tennessee could also be required in certain instances.

In any case, the Commissioner will not require any more documentation regarding "qualified expenses" than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED:

Reagan Farr, Commissioner

DATE: 3-27-07